Revenue (1927) Department.

Mi SERIES.

G.O. No. 967

DATED 23-5-27

[Despatch Abstract.]

uits (South Kanara) - High Court - A.S.No.259/1921 - Appeal o the Privy Council - Statement of law and facts - Forwarded to the India office.

No. 752

Government Pleader's Office,
High Court,
Madras, 23rd September '25.

From

M.R.Ry.,
C.V. Anantakrishna ayyar avl.,
Ag. Government Pleader,
M a d r a s.

To

The Second Secretary to Government of Madras,
Revenue Department,
Fort Saint George, Madras.

Sir,

A.S. No. 259 of 1921 on the file of the High Court - South Kanara District.

With reference to G.O. No. 773 Home (Judicial), dated the 20th March 1920 and G.O. Mis. No. 2255, Revenue, dated the 14th September 1920, I have the honour to report as follows:-

Certain properties belonging to an Aliasantana family in South Kanara was claimed by Government as escheat The last of the members of the family died in 1876. The Government commenced escheat proceedings once before and ~~brought~~ drafted the same in 1905. In 1910, however, the Government reconsidered the matter and declared the property as escheated to the Government on failure of heirs. The original suit was instituted by the Secretary of State for India in Council in the Subordinate Judge's Court at South Kanara to recover possession of 3 items of properties. The Subordinate Judge dismissed the suit holding that the Government had not proved

the

the absence of all heirs to the deceased owner; he also held that the suit was barred by limitation. The appeal preferred by the Government, Appeal No. 259 of 1921, was heard on 27th, 28th and 31st of August and the 3rd of September 1925 and judgment was delivered to-day. The Court held that Government had established prima facie that there were no heirs left by the deceased owner and that the defendants had not let in any evidence as against the evidence addused by the Government. In the circumstances, the High Court reversed the findings of the Subordinate Judge and held that the properties ~~were Mulgeni~~ escheated to Government for want of heirs. As regards item 2, the High Court agreed with the Subordinate Judge and that the said properties had been granted on Mulgeni long before the death of the last holder and that the right of the family to contest the Mulgeni was barred by limitation and consequently the Government could not recover that item. The High Court also decided that the defendants were not entitled to value of the improvements effected by them prior to 1905. But as the Government had offered in the plaint to pay for improvements effected after the escheat proceedings were first dropped by the Government, the High Court decreed in favour of the defenda the value of the improvements effected after 1905. The High Court also decided that the Government were entitled to mesne profits on the properties decreed. Proportionate costs also were decreed.

As the decision is substantially in favour of the Government except as regards item 2 and as the decision of the High Court as regards item 2, concurring as it does with the finding of the Subordinate Judge, seems to be corre

I am of opinion that no further steps need be taken in respect of item 2.

I have the honour to be,

Sir,

Your most obedient servant

Ag. Government Pleader.

Extract — Sindh Kanoon

A. S. No. 259 of 1921 — Right

— From the Sixth Pleas

No. 752, d. 23-9-25

Encl. No. 1253 A/25-1/21

Refers to the Bd. of Rev. for any remarks.

AJR
.9.9.25

29/9

29/9

29/9

The Bd. of Rev., Z. R. & S.

Note — After time, the foreign exps will be traced and put to and Secy's query below answered.

Rogers

Revenue ~~B~~DEPARTMENT. C.N. 31

CURRENT No. Kan 610 E

Received ... 192 Registered 2 - 11 - 1925.

Subject.

Suits (South Kanara)- High Court- A.S. 259/21- Escheat- Result- Communicated- Board's remarks submitted.

ENCLOSURES.
No.
Spare copies

Refce. No. A 5645-25-2

Station Madras *Dated the* 29th October '25 ~~102~~

From
W. Scott Brown Esq.,I.C.S.,
Secretary,
Land Revenue and
~~The~~ Board of Revenue ~~Revenue~~ Settlement, ~~etc.~~
~~Separate Revenue.~~

~~Resolution~~
Reference.

P.L.Moore Esq.,C.I.E.,I.C.S.,
Commr. of Land Revenue.

Read the following paper:-

Endorsement from Government, Revenue Department, No. 1253 A/25-1 dated the 29th September 1925.

Reference.-

The appeal referred to in Government Pleader's letter No. 752 dated 23rd September 1925 relates to the property declared escheat in G.O.No. 2317 Revenue, dated 10th October 1916.

2. In pursuance of the orders in para. 2 of the above

G.O. a suit was filed in the Court of the Subordinate Judge of South Kanara for the recovery of possession of the properties declared escheat and for mesne profits.

3. The Sub Judge dismissed the suit holding that Government had not proved the absence of all heirs to the deceased owner and that in the case of item 2 in the schedule of properties the suit was barred by limitation.

4. After taking the advice of the then Government Pleader, Madras, the Board sanctioned the filing of an appeal against the Sub Judge's judgment.

5. The Government Pleader reports that Government have succeeded in the appeal except in regard to item 2 in the schedule of properties.

As regards the excepted item, the High Court have agreed with the Sub Judge that the properties referred to therein had been granted on Mulgeni long before the death of the last holder and that the right of the family to contest the Mulgeni was barred by limitation and consequently Government could not recover that item.

6. The mulgeni referred to in the above paragraph is clearly the one referred to in paragraph 4 of the Collector's recommendation in Col. 12 of the application for declaring the property escheat printed at page 3 of G.O. 2317 Revenue, dated 10th October 1916. That the date of the Mulgeni as given in this application namely 1882 is a mistake for 1862, is seen from the translation of the Tahamanna which is found printed on page 4 of the G.O. From paragraph 3 of the remarks it is seen that the last legal owner of the property died in 1876. The lease had thus run for 14 years at the time of the death of the last owner and a suit even by that owner would then have been barred under article 144 of the First schedule to the Limitation Act IX of 1908. As Government can clai only through the last legal owner their right is similarly barred.

At the time of filing the appeal, the Government Pleader, Madras, pointed out that the case for Government in regard to this

item

item was weak but as there was a certain amount of evidence to support the argument that there was no intention to give effect to the Mulgenis, he suggested the addition of a grou with reference to item 2 also. It is not known whether thi point was considered by the High Court as the copy of the judgment has not yet been received but it does not appear be material in view of the point of limitation.

In the circumstances the Board agrees with the Govern· ment Pleader,Madras, that no further steps need be taken i the matter.

Secretary.

The Second Secretary to Government,

with Government Pleader's opinion.

O p i n i o n.

In my view there are good grounds for preferring an appeal in this case. On the issue whether Durgi left no heirs and whether the plaint properties have escheated to the Crown the documentary evidence lends considerable support to the case of escheat set up by the Government. Ex. D.D. (the Thahanamah attested by the claimant's uncle) and C.C. (the judgment in appeal 200, 211, 220 of 1880) have been misinterpreted by the learned Judge. The Kudtala proceedings also support the plaintiff's case. I am not here offering a detailed criticism of the learned judge's judgment as I agree generally with the points urged by the Government Pleader in his memorandum and also with the views of the Collector especially with reference to exhibits C.C. and U.1. Beyond the statement contained in the vakalatnama that Sheshia Shetty is the cousin or brother of Kollu Shettithi there is really no substantial evidence to support the claim of Ananthayya to the property in question. The oral evidence of P.W.3 and P.W. 12 is not entitled to much weight. The fact that certain records were not produced by the plaintiff and that the Government at first dropped the escheat proceedings seem to have considerably influenced the learned judge in dismissing the plaintiff's case.

The Government's claim to the Mulgeni property does not seem to be strong but there is a certain amount of evidence to support the argument that the 2 Mulgenis were neve intended to be given effect to. If an appeal is decided upon, I would advise that a ground may be added with reference to this part of the case also.

I do not find any remark in the Collector's letter regarding improvements and mesne profits. The Government offered to pay only a very small amount as value for the improvement but the judge has ordered the large sum of Rs. 26534-13-6 to be deposited in case of eviction. I take it that the appeal memo should contain grounds with regard to these as well as item 3 in the plaint.

The Collector suggests (para 7 of his letter) that

the Local Government Pleader should be deputed to instruct me at the time of the filing of the appeal or subsequently. I may be permitted to point out that the instructions of the Local Government Pleader in the manner indicated by the Collector will be more helpful to me at the time of the filing of the appeal and if the Government approves of the Collector's suggestion a telegram may be sent to him to meet me as the High Court re-opens on the 25th.

(Sd.) C. Madhavan Nair,

Madras, 18th July 1921. Government Pleader.

Suits - South Kanara - High Court -
s 259-21 — Escheat - Boards Reference
o A 5645-25-2 d 29.10.25.

M. 3610 E-25-1 d: 13. 11. 25

The Board of Revenue is requested to
take whether the ~~Govt have taken~~
possession of the escheat properties
decreed to Govt in A.S. no. 259/21 and
ill of the High Court, and whether the
nesne profits have been collected.
(has been taken)
not already done, the Board is
requested to take early steps towards
the execution of the decree.

C.F. 31

ASST. SECRETARY TO GOVT. 22NOV1925 REVENUE DEPARTMENT

REVENUE **DEPARTMENT.**

CURRENT No.

Received ..... 192 . *Registered* 192

Subject.

Suits (South Kanara) - High Court - O.S.No.259/21 - Escheat - Possession of properties and collection of mesne profits

ENCLOSURES.

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are copies.....

Reference **A.** No. 5645-25-3.

Station Madras, *Dated the* 20th November 1925

From

W.Scott Brown, Esq., I.C.S.,
Secretary,
~~The~~ Board of Revenue

Land Revenue and Revenue Settlement, etc. ~~Separate Revenue.~~

~~Resolution~~ Reference.

P.J.Moore, Esq., C.I.E., I.C.S.,
Commissioner of Land Revenue.

Read the following:-

Memorandum from Government, Revenue Department, No.3610 25-1, dated 13th November 1925.

REFERENCE:

x x

2. The Board has no information on the points referred to in the first sentence of the Government Memorandum read above and has asked the Collector to report on them. The Board will submit its report on receipt of the Collector's reply.

3. The Government Pleader, Madras, has been requested to obtain and forward at an early date certified copies

judgment and the decree in the case. On receipt of these copies the Board will direct the Collector to take early steps for the execution of the decree.

4. x x x x

Secretary. 21/11

To the Collector of South Kanara, (paragraph 1 only).

" the Second Secretary to Government, (paragraphs 2 and 3).

" the Government Pleader, Madras, (paragraph 4).

S.S./21-11.

21/11/25

C F. 80

Judicial **DEPARTMENT.**

Rev 4062 F

Received ... 192 — AGT. SECRETARY TO GOVT. 9-DEC 1925 REVENUE DEPARTMENT — *Registered* 9—12—1925.

Subject.

Forwarding copy of High Court's judgment in A.S. No. 259 of 1921 - South Kanara District.

ENCLOSURES.
No. .....
.....
Spare copies .....

No. 1042.

Station Madras. *Dated the* 8th December '25. 192

M.R.Ry.,

From (Name) C.V. Anantakrishna ayyar avl.,

(Designation) Ag. Government Pleader,
Madras.

To The second Secretary to the Government of Madras

Revenue Department.

Sir,

In continuation of my letter No. 752, dated the 23rd September last, I have the honour to forward herewith certified copy of judgment in A.S. No. 259 of 1921 on the file of the High Court, Madras.

I have the honour to be,

Sir,

Your most obedient servant,

Ag. Government Pleader.

O.M. No. 3610 E/25-27. 10.12.25

Suits. (South Kanara) - High Court A.S. 259/24. - Escheat. Bd's Ref. No. 5645-25.3 dt 20.11.1925

A certified copy of ~~Judgment~~ in A.S. No 259 of 1921 on the file of the High Court is forward to the Board of Revenue

9/12

To

The Bd of Rev,

L.R.A.S.

(With copy of Judgment)

(Copy ~~the~~ kept in file for Reference) 9.12.25

(~~Original~~ to be kept in file)

9/12/25

G.F. 81

REVENUE DEPARTMENT.

CURRENT No. Rev. 4221E

Received 26 DEC 1925. Registered 26-12-25 1925.

Subject.

SUITS - (South Kanara) High Court - A.S.No. 359/21 - Escheat - Possession of Properties and collection of Mesne profits - Judgment and decree - communicated.

ENCLOSURES.

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.....

are copies.....

Miscellaneous No. 2823

Station MADRAS Dated the 22nd December 1925

From W.SCOTT BROWN, ESQUIRE, I.C.S.,

SECRETARY Land Revenue and
The Board of Revenue ~~Revenue~~ Settlement, etc.
~~Separate Revenue.~~

H.A.B. VERNON, Esquire, I.C.S.,
Commissioner of Land Revenue.

Resolution
~~Reference.~~

Read - the following:-

I.

Letter from M.R.Ry., C.V. Anantakrishna Ayyar, Avl., Ag. Government Pleader, Madras No. 1043, Dated 8th Decr. '25.

II.

Letter from G.W. Wells, Esquire, M.A., I.C.S., - Collector of South Kanara., Ref.on.A3-4471-25-,dated 4th December 1925.

RESOLUTION:-

x x x x x

3. With reference to Government Memorandum No. 3610 E-25-1, dated 13-11-'25 and in continuation of Board's

Reference

Referen[illegible], dated 30-11-1935, the Board submits that the Collector has reported that as the copies of High Court's judgment and decree in the case had not been received by him it was not possible for him to take setps for recovering possession of the property and collecting mesne profits. They are now being forwarded to him and he is being requested to take early steps for the execution of the decree and the collection of the costs awarded to Government.

(True Extract)

W Scott Brown 23/12

SECRETARY.

To

The Collector of South Kanara with copies of judgment, decree and a receipt. (Para 1 and 2 only)

The Secretary to the Government of Madras, Revenue Dept. (Para 3 only)

Copy to the Government Pleader, Madras, (Para. 2 only)

P.T.S., 23/12 24/12

Em No 3610 E/25-28, 6-3.

South (South Kanara) High C
AS. No 259/25. Escheat - Passe
of properties and collection of
mesne profits. Boards. Ref
Mis No. 2822 & 22.12.1925.

The Board of Revenue i
requested to expedite the
report promised in para
of its Ref. A No 5645-25
15C7 & 20.11.1925.

DESPATCH
8 MAR 1926

To

The Board of Revenue
RAS

2.3.26.

2/3/26

C F. 30

Judicial **DEPARTMENT.**

827.5.

Received 17MAR1926 192 Registered 17.3.192 6

Subject.

South Kanara District - High Court appeal No. 259 of 1921 - C.M.P. of 1926 for leave to appeal to P.C. instructions requested.

Enclosures.
No.
Spare copies

No. 282

Station Madras. Dated the 16th March '26 19

M.R.Ry.

From (Name) Rao Bahadur C.V. Anantakrishna ayyar avl
(Designation) Ag. Government Pleader
Madras.

To The Secretary to the Government of Madras
Revenue Departme

Sir,

In continuation of my letter No. 752, dated the 23rd September 1925, I have the honour to forward herewith copies of affidavit and petition for leave to appeal to Privy Council in A.S. No. 259 of 1921 on the file of the High Court and to request that the same may be returned to me along with the necessary instructions. The enclosures were served upon me by the petitioner's vakil to-day.

I have the honour to be,
Sir,
Your most obedient servant,
C.V. Anantakrishna Ayyar
Ag. Government Pleader.

[C No. 827 E/26] From the Govt. Pleader, Madras; No. 282 & 16.3.26.

Encl No. 3610 827 E/25-38, 20-3-26.

Referred to the Board of Revenue for any early remarks.

19/3

20/3

20 March 1926

(with copies of Govt. letter & affidavit & petition) in original to be returned)

20 - 33

18.3.26

Sa 18/3/26

mind on 20.4.26.

Revenue **DEPARTMENT.**

CURRENT No. 846 - 2

Received 19MAR1926 192 *Registered* 23-3 192 6.

ASST. SECRETARY TO GOVT. REVENUE DEPARTMENT

Subject.

Suits (South Kanara) - High Court - A.S.259/21 - Escheat Possession of Properties and collection of mesne profits.

ENCLOSURES.
No.
Spare copies

Reference No. A.1514-26-1

Station Madras *Dated the* 13th March 1926

From W.Scott Brown Esquire, I.C.S.,
Secretary,
Land Revenue and
~~The~~ Board of Revenue ~~Revenue~~ Settlement, ~~etc.~~
~~Separate Revenue.~~

M.R.Ry.Diwan Bahadur T.Raghaviah Pantulu Garu, C.S.I.,
Commissioner of Land Revenue.

~~Resolution~~
Reference.

Read the following:-

Again Board's Proceedings No.2822 Mis., dated 22nd December 1925.

Memorandum from Government, Revenue Department, No. 3610 E - 25-2 dated 6th March 1926.

Reference.-

With reference to para. 3 of Board's Proceedings 2822 Mis. dated 22-12-'25 the Collector of South Kanara is requested to report what steps he has taken to recover possession of the escheated properties and to collect the mesne profits and costs awarded to Government

r of South Kanara.

Revenue **DEPARTMENT.**

CURRENT No.

Received ... APR 1926 ... 192 *Registered* ... 1926.-

ASST. SECRETARY TO GOVT. REVENUE DEPARTMENT

Subject.

Suits (South Kanara) - High Court - A.S.259/21 - Escheat · Possession of properties and mesne profits - Appeal to Privy Council - Leave - Application - Board's remarks submitted.

ENCLOSURES.
No.
Spare copies.

Miscellaneous No. 760

Station Madras *Dated the* 30th March 1926. 192

From
W.Scott Brown, Esq.,I.C.S.,
Secretary,
~~The~~ Board of Revenue ~~Revenue Settlement, etc. Separate Revenue.~~ Land Revenue and

To
M.R.Ry. Diwan Bahadur T.Raghaviah Pantulu Garu, C.S.I.,
Commissioner of Land Revenue.

~~Reference.~~ Resolution

Read the following:-

Endorsement by Government, Revenue Department, No. 3610 E/25-3, dated 20th March 1926.

RESOLUTION:-

The value of both the suit (Rs.41,888-11-8) and the appeal (Rs.32,499-9-7) in question is more than Rs.10,000, the limit prescribed in section 109 of the C.P.C. As the High Court reversed the lower court's judgment it is not necessary that there should be a point of law to enable the defendants to file an appeal in the Privy Council under Section 110 of the C.P.C. There is thus no objection to the granting of the leave to appeal to the Privy Council applied for by the defendants and the Board

considers that the application need not be opposed.

2. In case it is open to Government to question the adequacy of the security offered by the defendants for the costs of Government in the appeal to the Privy Council the Government Pleader, Madras, may be requested to take instructions direct from the Collector on the point.

for Secretary.

To the Secretary to Government, Revenue Department,

with enclosures.

S.S./30-3.

Suits - South Kanara - High Court

A.S. No. 259/21 - Escheat -

Letter from the Govt Pleader, Madras

No 282 dt 16.3.26.

O.M. No. 3610 E-25-4 dt 15-4-26

The Govt Considers, that ~~there can be no Objection to the granting of the~~ the application for ~~of~~ the defendants leave to appeal to the Privy Council ~~applied for by the defendants and that the application~~ necessary

2/ The Govt Pleader, Madras is requested to take ni..... ~~nio~~ from the Collector on the adequacy of the security offered by the defendant for the Costs of Govt in the appeal to the Privy Council.

3/ Judicial DEPARTMENT.

Rev. 1183-

Received 22 APR 1926 192 Registered Rev. 22.4 192

Subject.

Suit - South Kanara - High Court - A.S. No. 259/21
Escheat - Application for leave to ~~xxxxxxxxxx~~ appeal to P.C. - leave granted - result communicated.

ENCLOSURES.
No.
Spare copies

No. 405

Station Madras. Dated the 21st April '26. 1

M.R.Ry

From (Name) Rao Bahadur C.V Anantakrishna ayyar &c.
(Designation) Ag. Government Pleader, Madras.

To The Secretary to the Government of Madras
Revenue Departmer

Sir,

C.M.P. No. 1181 & 1182/26 - High Court.

With reference to Government Memorandum No. 3610 E/25-4, Revenue, dated the 15th instant, I have the honour to inform the Government that the application for leave to appeal to Privy Council came on for hearing to-day, when leave was granted since the High Court reversed the judgment of the Lower Court and the subject matter is more than Rs. 10000/- in value As ~~xxx~~ regards the petitioner's prayer to allow to offer the immoveable property as security for costs of the respondent, their Lordships held that no

special reasons were shown for not following the ordinary proceedure and consequently they dismissed the petition and directed the petitioner (Appellant) to furnish security in cash or in the form of Government Promissory Notes within the time allowed by the Law

I have the honour to be,

Sir,

Your most obedient servant

Ag. Government Pleader

Suits - (South Kanara) - High Court. A.S. No. 259/21 - Escheat properties - taking possession - Coll^n - Collection. ~~letter~~ Appeal to Privy Council - letter from the G.P. Madras No 405 dt 21-4-1926

Endt. No 3610E/25-5 dt 28.4.26.

Communicated to the Board of Rev

The Board is requested to expedite its ~~repo~~ report referred to in para 3 of the Board's ~~Re~~ Proceedings mis 2822 dt 22-12-25

A.H.C.J

AS 26/4

The Board of Rev (R.R.S) (A + Endt)

" Collector of South Kanara (A + Endt) 24/4/26

Dp with enclosure.

(Two) 29 APR 1926

39

C.F. 31

DEPARTMENT.

CURRENT No. 1200-E 21

Received ..... 192 *Registered* 26.4 1926

ASST. SECRETARY TO GOVT. 24 APR 1926 REVENUE DEPARTMENT

Subject.

Suits (South Kanara) - High Court - A.S.No. 259/21 - Escheat - Possession of properties and Collection of mesne profits - Execution of decree.

ENCLOSURES.
No. .....
.....
Spare copies ..

Reference No. A.1514-26-2,

Station Madras *Dated the* 21st April 1926. 192

From

W.Scott Brown, Esq., I.C.S.,
Secretary,

~~The~~ Board of Revenue ~~Revenue~~ Land Revenue and Settlement, etc. ~~Separate Revenue.~~

To

M.R.Ry. Diwan Bahadur T.Raghaviah Pantulu Garu, C.S.I.,
Commissioner of Land Revenue.

~~Resolution~~ Reference.

Read the following:-

P 2367. Memorandum from Government, Revenue Department, No.3610 E-25-2, dated 6th March 1926.

II.

Board's Reference No. A.1514-26-1, dated 13-3-1926.

III.

Letter from G.W.Wells, Esq., M.A., I.C.S., Collector of South Kanara, Ref. on A-3-4471-21, dated 26th March 1926.

*****

REFERENCE:

Submitted to Government with reference to Government Memorandum No. 3610 E-25-2, Rev,, dated 6th March 1926.

P 2367.

he High Court in the case were sent to the Collector on
-12-1925. The Collector is requested to explain the
elay of over three months in having the execution application
repared.

for Secretary. 22/4

o the Secretary to Government, Revenue Department.
" the Collector of South Kanara, paragraph 2 only.

.S./22-4. 22/4

Copy of letter from G..Wells, Esq., M.A., I.C.S., Collector of South Kanara, Ref. on A.3-4471-21, dated 28th March 1926.

The Government Pleader, Bangalore, has been asked to repare a draft execution petition. As soon as it is received rom him, I shall have it filed in Court.

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